United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

Henry W. Hodges
for Lusk

IN THE

COURT OF APPEALS, DISTRICT OF COLUMBIA

JANUARY TERM, 1908.

526

No. 1845

GARFIELD MEMORIAL HOSPITAL, A CORPORATION, APPELLANT,

vs.

HENRY B. F. MACFARLAND, *ET AL.*, COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

JAMES H. HAYDEN,
Of Counsel for Appellant.

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BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This cause was instituted for the condemnation of land in the city of Washington to be taken for the purpose of extending Eleventh Street, Northwest. The appeal runs from an order of the Supreme Court of the District of Columbia, sitting as a district court, whereby the verdict of a jury summoned to re-assess benefits against certain lands abutting on Eleventh Street, was finally ratified and confirmed.

The proceedings that led up to this order were as follows:

On August 9, 1904, the Commissioners of the District of Columbia filed an amended petition in this cause, whereby they alleged (pp. 1-3):

(1) On May 31, 1889, said Commissioners, acting under an authority conferred by act of Congress, approved March

3, 1899, filed their petition, praying the condemnation of certain land for the purpose of extending Eleventh Street, Northwest.

(2) On November 10, 1899, the court directed the marshal to summon a jury of seven men to appear on the premises described in the petition, on a day specified, and thereupon assess damages, if any, which each owner of land taken might sustain by reason of the extension of the street and to assess at least one-half of the amount found due and awarded as damages against those pieces of land which would abut on the street when extended.

(3) Such a jury was empaneled, instructed by the court with respect to its duties and on February 16, 1900, filed its verdict. The verdict was ratified in so far as it related to damages awarded, but vacated in so far as it related to the assessments for benefits. On appeal this order was reversed in so far as it vacated the assessments of benefits and on mandate of this court that part of the order was set aside. The Commissioners then moved the court to confirm the assessments of benefits, but the court after hearing exceptions filed by the owners of land assessed, overruled the motion. From that order the Commissioners noted an appeal, but did not perfect it.

(4) By an act approved June 6, 1900, Congress authorized and directed the Commissioners, in case the assesments for benefits should be declared void to apply to the court below for a re-assessment of the same. On June 17, 1904, the court ordered the Commissioners to proceed in conformity with that act.

Upon this showing the Commissioners, by their amended petition, prayed the court: (1) to cause public notice to be given of the filing of the amended petition and warning all persons interested in the proceedings to attend the same; and (2) to appoint a jury,

> "to re-assess such amount of the amount heretofore found to be due and awarded as damages for and in respect of the land condemned for the extension of Eleventh Street, as benefits and to the extent of such benefits against those pieces or parcels of land on each side of said Eleventh Street, as extended, and also on any and all pieces or parcels of land which have been benefited by the extension of said Eleventh Street * * * ."

On November 28, 1904, the court below ordered public notice as prayed and directed the marshal to summon a jury for the purposes set forth in the amended petition. Publication of the notice was made and a jury summoned in conformity with this order (p. 4).

On June 6, 1906, the jury filed its verdict (p. 5). Among other assessments of benefits the jury found (pp. 6, 19-20):

> "Against *Garfield Hospital* with a frontage of 562.48 feet on Eleventh Street to a depth of 200 feet, $6,-700."

It appears from the bill of exceptions (pp. 21-22), that the appellant, *Garfield Memorial Hospital,* was organized under the laws of the District of Columbia, its corporate objects being:

> "To establish and maintain a general hospital, to be located in the District of Columbia, for the gratuitous medical and surgical treatment of all persons, without distinction of race, sex, or creed; Provided, however, that such persons as may be able and willing to defray the expenses of treatment therein may be admitted upon such terms as may be prescribed by the by-laws of the corporation."

It appears further (pp. 21-25) that the hospital owned no land abutting on Eleventh Street extended, except a tract

which was purchased for it by the United States from the heirs of C. G. Schneider in April 30, 1903. This tract had a frontage of 562.48 feet on the easterly side of the street. In some places its depth was less than 200 feet. The hospital owned land adjoining it on the eastward, throughout its entire depth. The land referred to in the verdict consisted of the Schneider tract and enough of the hospital's land to the eastward of it to make up a uniform depth of 200 feet from the easterly building line of Eleventh Street (p. 6). The deed by which the Schneider tract was conveyed to the hospital contained the following clause, quoted from the Sundry Civil Appropriation Act of June 28, 1902 (32 Stats. L., 467):

> "For the purchase of lands belonging to the heirs of M. H. Schneider, adjoining the present Garfield Memorial Hospital land on the west from Boundary Street back to Clifton Street in Washington, District of Columbia, containing about sixty-seven thousand square feet; *fifty thousand dollars* to be expended under the direction of the Commissioners of the District of Columbia. One half of which shall be paid from the revenues of the District of Columbia and the other half from the Treasury of the United States. *Provided*, That the land shall be graded by the present owners to an elevation satisfactory to the trustees of the above hospital, *and provided further that the District of Columbia assume all special assessments pending against said lands of the heirs of M. H. Schneider.*"

The consideration for this conveyance was $50,000, "and other valuable considerations set forth in said act of Congress."

On June 18, 1906, being less than thirty days after the filing of the verdict, the appellant filed exceptions to it, showing among other things (p. 20):

(1) The verdict and assessment sought to be imposed

were unjust because the said hospital being an institution of purely public charity, conducted without charge to inmates, profits, or income, its property was by law exempt from taxation.

(2) The verdict and assessment were unjust because all of the land owned by the said hospital abutting on Eleventh Street extended, was purchased for it by the United States pursuant to the act of Congress, approved June 28, 1902, entitled "An act, making appropriations for sundry civil expenses of the government for the fiscal year, ending June thirtieth, nineteen hundred and three" (32 Stat. L., 467), and by the terms of the said act the said hospital was relieved from the assessment sought to be imposed upon the said land and the said assessment was made a charge upon the District of Columbia.

(3) That the assessment sought to be levied against the said hospital was excessive and unreasonable for that it did not own the land in question in fee simple, and its right or title with respect thereto was limited by law to the use of the said land for hospital purposes, without the right to participate in the proceeds of any sale or lease thereof, or otherwise to benefit by any enhancement in the value of the same.

The Commissioners moved the court to finally ratify and confirm the verdict and assessment, notwithstanding these exceptions (p. 21). After hearing the motion was granted and the exceptions overruled by the order above-mentioned, which was entered May 6, 1907 (p. 22). In due course the hospital appealed (pp. 18-19).

ASSIGNMENT OF ERRORS.

The errors of the court below, relied upon by the appellant are as follows:

1. The said court erred in ratifying and confirming the

verdict herein in so far as it purported to apply to this appellant or the land of the appellant therein referred to, for that the appellant and its said land were by law exempt from such taxation and the assessment sought to be imposed upon was by law made a charge upon the District of Columbia.

2. The said court erred in ratifying and confirming the verdict herein, in so far as it purported to apply to this appellant or its property, for that the right or title of the appellant to the land referred to in the said verdict was by law limited to the use and occupation of the same for hospital purposes and the appellant had no interest or estate in the said land which could be benefitted by the extension of Eleventh Street, wherefore the assessment sought to be made against the appellant was unreasonable and unjust.

3. The said court erred in holding that as a district court it had not jurisdiction to decide whether the appellant and its property were or were not exempt from taxation or from the assessment for benefits set forth in the verdict herein.

4. The said court erred in overruling the appellant's exceptions to the verdict herein.

ARGUMENT.

I.

The court below had jurisdiction to decide whether persons or lands included in the verdict, were by law exempt from the assessments for benefits, sought to be imposed. It appearing that the appellant and its interest or estate in the land in question were (1) *by general law of the District of Columbia exempt from taxation or assessment of any sort; and* (2) *by a special provision of law, exempt from the said assessment for*

benefits; the verdict should have been set aside in so far as it related to the appellant or its property (Errors 1 and 3).

This cause was instituted May 31, 1899, pursuant to the provisions of the Act of Congress, approved March 3, 1899, entitled "An Act to extend S Street, in the District of Columbia, and for other purposes" (30 Stat. L., 1344). The portions of that act applicable to the extension of Eleventh Street, Northwest, are as follows:

> "Sec. 3. That within ninety days after the passage of this Act, the Commissioners of the District of Columbia are hereby authorized and directed to institute by a petition in the Supreme Court of the District of Columbia, sitting as a District Court, a proceeding to condemn the land necessary for the extension of Eleventh Street, Northwest, on a straight extension of the lines thereof, as now established in the city of Washington, with a width of ninety feet, from Florida Avenue to Harvard Street, and thence with the same width and in a straight line to Lydecker Avenue, joining said avenue with its center line opposite the center line of Eslin Avenue.
>
> "That of the amount due and awarded as damages for and in respect of the land condemned under this Act for the extension of the said Eleventh Street at least one-half thereof shall be assessed by said jury in said proceedings against those pieces or parcels of ground abutting upon that portion of the street to be opened, and extending to a depth of two hundred feet from the building lines of said Eleventh Street as extended.
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> * * * * * * * * *
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> "Sec. 5. That the proceedings for the condemnation of said lands as provided for in sections one, two, *three,* and four of this Act shall be under and according to the provisions of chapter eleven of the Revised Statutes of the United States relating to the District

of Columbia which provide for the condemnation of lands in said District for public highways; * * * * * * * * * * * * * * * * *

"Sec. 7. That the sums to be assessed against each lot and piece and parcel of ground shall be determined and designated by the jury, and in determining what amount shall be assessed against any particular piece or parcel of ground, the jury shall take into consideration the situation of the said lots, and the benefits that they may severally receive from the opening of said streets. * * * *

"Sec. 8. That when confirmed by the said court, the assessments shall severally be a lien upon the land assessed, and shall be collected as *special improvement taxes in the District of Columbia,* and shall be payable in five equal installments, with interest at the rate of four per centum per annum until paid. * * * *"

The amended petition herein was filed August 9, 1904, after the assessment for benefits, levied by the jury appointed pursuant to the original petition, had been declared void. Authority for the later proceeding was conferred by the Act of Congress approved June 6, 1900, entitled "An act for the extension of Columbia Road east of Thirteenth Street, and for other purposes" (31 Stat. L., 665). Section 12 of that act provided:

"That the provisions of sections three, four, five, six, seven, eight and eleven hereof, and the provisions of section two hereof as to the assessment of benefits and as to the right of the Commissioners of the District of Columbia to reject the award of the jury, be and the same are hereby, made applicable to the several Acts of Congress approved March third, eighteen hundred and ninety-nine, entitled 'An Act to extend S Street in the District of Columbia, and for other purposes,' * * * * * * * except, nevertheless, that the assessment areas fixed by said several Acts in reference to said several streets shall be and remain as in and by said Acts of Congress provided.

"The Commissioners of the District of Columbia are hereby authorized and directed to make application to the Supreme Court of the District of Columbia holding a district court, for the final ratification and confirmation of the awards of the jury for and in respect to the land condemned for the extension of Eleventh Street; and said awards when so ratified, shall be paid as provided by said Act of March third, eighteen hundred and ninety-nine, nothing in said Act to the contrary notwithstanding. *And in the event that the assessments for benefits levied by the jury in relation to said Eleventh Street shall for any reason be declared void, the said Commissioners of the District of Columbia are authorized and directed to make application to said court for a reassessment of such benefits under and in accordance with the provisions of this Act.*"

Section 4 of the act, among other things, provided:

"When the hearing is concluded the jury, or a majority of them, shall return to said court, in writing, its verdict of the amount to be found due and payable as damages sustained by reason of the extension of said street, under the provisions thereof, *and of the pieces or parcel of lands benefited by such extension and the amount of the assessment for such benefits against the same.*"

Section 6 of the act provided:

"That the court shall have power to hear and determine any objections which may be filed to said verdict or award, and to set aside and vacate the same, *in whole or in part, when satisfied that it is unjust or unreasonable,* and in such event a new jury shall be summoned, who shall proceed to assess the damages or benefits, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury. * * * * * * That the exceptions or ob-

jections to the verdict and award shall be filed within *thirty* days after the return of such verdict and award."

Section 8 reads:

"That when confirmed by the court the *several assessments* herein provided to be made shall severally be a *lien upon the land assessed,* and shall be collected as *special improvement taxes* in the District of Columbia, and shall be payable in four equal installments with interest at the rate of four per centum per annum from the date of confirmation until paid. *That said court may allow amendments in form or substance in any petition, process, record or proceeding,* or in the description of property proposed to be taken, or of property assessed for benefits whenever such amendments will not interfere with the substantial rights of parties interested, *and any such amendments may be made after as well as before the order or judgment confirming the verdict or award aforesaid.*"

From these statutes and especially from sections six and eight of the Act of June 6, 1900, just quoted, it will be seen that the court below was clothed with jurisdiction to review the verdict of the jury and to vacate the same, in whole or in part, when satisfied that as a whole or in part, it was "unjust or unreasonable." Certainly an assessment against land owned by an institution which was, by law, exempt from taxation of any description, and against land that had been expressly declared exempt from liability for the assessment for benefits, in question, was unjust and unreasonable. In either case the court below had authority to vacate the verdict in so far as it related to such land or its owner. In the statement of the case it has been shown that the appellant was an institution of purely public charity, duly organized and existing under the laws of the District of Columbia. It was entitled to all benefits or immunities conferred by statute upon such institutions. Section 7 of

Chapter 65 of the Compiled Statutes in force in the District of Columbia (p. 519), provides:

> "The property exempt from taxation under this act shall be the following and no other, namely: First, the Corcoran Art Building, free public library buildings, churches, the Soldiers' Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, *buildings belonging to institutions of purely public charity, conducted without charge to the inmates, profit or income.* * * * * * * * *"

The assessment or special improvement tax sought to be imposed upon the appellant and its land is beyond question *"taxation,"* from which, institutions, like the appellant, were declared exempt.

It is conceded that the land of the Garfield Hospital referred to in the verdict (*supra*) is the only land owned by the Garfield Memorial Hospital which abuts on Eleventh Street extended (p. 24). It is conceded further that the entire street frontage of that land and in fact all of it but a narrow strip extending along its rear, constituted the so-called Schneider tract. With respect to the purchase of the Schneider tract, it was provided by the Act of Congress, pursuant to which the purchase was made (32 Stat. L., 419-467):

> *"Garfield Memorial Hospital.* * * * * * * For the purchase of lands belonging to the heirs of M. H. (C. G.) Schneider, adjoining the present Garfield Memorial Hospital land on the west from Boundary Street back to Clifton Street in Washington, District of Columbia, containing about sixty-seven thousand square feet; *fifty thousand dollars* to be expended under the direction of the Commissioners of the District of Columbia. One-half of which shall be paid from the revenues of the District of Columbia, and the other half

> from the treasury of the United States. *Provided*. That the land shall be graded by the present owners to an elevation satisfactory to the trustees of the above hospital, *and provided further that the District of Columbia assume all special assessments pending against said lands of the heirs of M. H. (C. G.) Schneider.*"

The deed by which the Schneider heirs conveyed the property to the hospital recited the above clause and one of the considerations for the conveyance was the assumption by the Commissioners of the special assessment then pending against the land. On April 30, 1903, when the deed was executed, the special assessment now sought to be imposed was pending. This suit had been instituted May 31, 1899. To be sure the question under consideration at the time of the conveyance related to the confirmation of the verdict rendered by the jury summoned under the original petition. But it cannot be denied that the verdict now in question and other proceedings had pursuant to the amended petition are all part and parcel of the same cause and that the assessment for benefits now sought to be imposed is no other than that authorized and directed to be made by the act of March 3, 1899. Clearly the Schneider tract as such, was relieved of liability for the assessment. It is clear also that the hospital, as the grantee of the property, took it on condition that that assessment should not constitute a lien against that land or an obligation that it would be called upon to meet. I submit, therefore, that the assessment as made by the jury was contrary to law and consequently "*unjust,*" and that the court below erred in confirming it.

Lest it should be urged by the appellees that the assessment was sustainable because, between the easterly boundary of the Schneider tract and a line drawn parallel with the easterly building line of Eleventh Street and two hundred feet distant therefrom, there intervened a narrow strip

of land, owned by the hospital, I call attention to the fact that this narrow strip did not abut on Eleventh Street and was not liable to be assessed.

I submit further that the verdict, being intended to represent the benefit accruing to the entire tract of land described therein, cannot justly be sustained on the theory that the narrow strip in the rear of the Schneider tract, without street frontage, might have derived *some* benefit from the extension of the street.

But apart from any question of the express exemption of the land, the general immunity of the hospital from taxation was sufficient to relieve both the institution and its property from the special improvement tax.

In its opinion, the court below said (p. 16):

> "If the hospital is exempt or if the District Commissioners under the tenure by which the hospital holds the said lands, are obliged to assume that assessment, then that question can be disposed of after confirmation of the verdict and, therefore, without deciding whether the hospital is required to pay these assessments, or exempt from them, I am constrained to overrule the exceptions and to confirm the award. * * * * *"

I submit that that is without force. The judgment confirming the verdict did not leave open the question of the hospital's liability. But for this appeal, the assessment would now constitute a lien on its land (Act of June 6, 1900, Sec. 87).

III.

The appellant had no interest or estate in the land in question, which could be benefited by the extension of Eleventh Street and is not liable to be assessed for the benefits accruing therefrom (*Error* 3).

The Act of Congress approved March 3, 1899, entitled "An Act making appropriation to provide for the Government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and ninety, and for other purposes (25 Stat. L., 793, 807), contained the following provision with respect to appropriations made in aid of charitable institutions of the District of Columbia:

> "All sums of money heretofore appropriated by Congress or which may hereafter be appropriated and expended in aid of the purchase of real estate shall (subject to any trust, deed, mortgage, or other security or incumbrance existing on such property at the time of its purchase, or created at the time of its purchase) *be a lien upon such property, and in case of the dissolution of any such corporation as in the preceding paragraph is mentioned, owning such property, or in case of the disposal of such property by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used in the purchase of such property.*"

We have seen from the statement of the case that Congress by the Sundry Civil Appropriation Act of 1902, appropriated $50,000 to be expended by the Commissioners of the District of Columbia in the purchase of the Schneider tract for the Garfield Memorial Hospital, also that that sum was expended in the purchase of the land and represented all of the purchase money paid for it. Therefore, the United States has a lien upon the property and in case the hospital should be dissolved or should alienate the land in any manner, its entire proceeds would revert to the government. In other words, the government would derive any benefit due to the enhancement in the value of the land whereas the hospital could not derive any. With a tenure consisting only of the right to the use of the land so long

as it might occupy the same for purposes of purely public charity, it is too patent to require argument that the hospital's interest or estate therein could not have been benefited by the extension of Eleventh Street to the amount of $6,700. It is submitted that the verdict was both unjust and unreasonable and as such should have been vacated.

Respectfully submitted,

JAMES H. HAYDEN,
Of Counsel.

Court of Appeals, District of Columbia.

No. 1845

GARFIELD MEMORIAL HOSPITAL, APPELLANT,

vs.

HENRY B. F. MACFARLAND ET AL.

BRIEF FOR APPELLEES.

EDWARD H. THOMAS.
JAS. FRANCIS SMITH.

Court of Appeals, District of Columbia.

NO. 1845.

GARFIELD MEMORIAL HOSPITAL, APPELLANT,

vs.

HENRY B. F. MACFARLAND ET AL.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This is an appeal of the Garfield Memorial Hospital from the order of the court, dated May 6, 1907, ratifying and confirming the verdict of the jury in the matter of the Extension of 11th street, which verdict included an assessment against the land of the Garfield Memorial Hospital with a frontage of 562.48 feet on Eleventh street, with a depth of 200 feet, said assessment amounting to $6,700.00. The appellant had previously filed objections to the verdict of the jury returned in said cause upon the following grounds: First, that the hospital was not correctly named in said verdict. Second, that the premises of said hospital were not described in said verdict. Third, that said verdict

and assessment against said hospital property was unlawful and void, for that the only lands owned by said hospital, which abut on Eleventh street extended, were purchased for the said hospital by the United States, pursuant to the provisions of an act of Congress, approved June 28, 1902, entitled "An act making appropriations for sundry civil expenses for the government for the fiscal year ending June 30, 1903, and for other purposes," and by said act of Congress said hospital was relieved and exempted from any assessment by any jury in this cause, any such assessment was imposed upon the District of Columbia. Fourth, that the said hospital is not the owner in fee simple of any land abutting on Eleventh street extended.

Fifth, that the said hospital is not subject to taxation under the laws of the District of Columbia.

Sixth, that the said jury was irregularly summoned, improperly constituted, and its verdict is null and void as to the said hospital.

ARGUMENT.

The general propositions made by the appellant, in common with other appellants in the Eleventh street case, have been disposed of by the court. The points to be presented here will be confined to those which affect the hospital exclusively.

The first objection is that the hospital is incorrectly named in the verdict. The correct name of the corporation being the Garfield Memorial Hospital, whereas in the verdict the designation "Garfield Hospital" is used. It is submitted that the name used in the verdict is sufficient to identify the owner, which is all that can be reasonably required. The omission of the word "Memorial" is in the same category with the omission of the middle name or initial in any proper name.

(Claflin *vs.* Chicago, 178 Ill., 549.)

The party designated as "Garfield Memorial Hospital" is presumed to be identical with the party named as "Garfield Hospital."

(Linck *vs.* Litchfield, 141 Ill., 469.)

Moreover, the Statute does not require the names of the owners of the property assessed to be set forth by the jury.

THE DESCRIPTION IS SUFFICIENT.

The description "against Garfield Hospital, with a frontage of 562.48 feet on Eleventh street to a depth of 200 feet," sufficiently identifies the property. "A description will be deemed sufficient if from the whole proceedings taken together there appears to be no difficulty in locating the land, and where they are described by given distances along specified streets and avenues, and the assessment shows substantially that such lands are assessed for benefits." Hamilton Special Assessments, Sec. 539. Lawrence *vs.* Killan, 11 Kan., 499. Moreover, it appears by stipulation of counsel (Record, page 24), that the land and premises referred to in said assessment for benefits as the land of the Garfield Hospital having a frontage of 562.48 feet on Eleventh street, consists in part of the land conveyed to the Garfield Memorial Hospital by the deed above mentioned and the said hospital owns no land abutting on Eleventh street, except that conveyed by the said deed, and the land to the eastward of and adjoining throughout its length the tract conveyed by the said deed." The deed referred to appears on page 25 of the Record.

The hospital property is not exempt from special assess-

ments. The appellants claim that they are exempt from this assessment by reason of the provisions of Section 7 of Chapter 55 of the Compiled Statutes of the District of Columbia, as follows:

> "Sec. 7. That the property exempt from taxation shall be the following and no other, namely, * * * institutions of purely public charity conducted without charge to inmates, profits or income," etc.

It does not appear by the record that the Garfield Memorial Hospital comes within the classes above designated, in fact, the inference from what does appear in the record would be quite to the contrary. But conceding for the sake of argument that the appellant is exempt from general taxation under the above provisions, it by no means follows that such a provision could operate as an exemption from special assessment. The law is settled that exemption statutes should be strictly construed, and that an exemption from general taxation is not susceptible of the construction claimed for it here.

> "Statutes exempting property from taxation do not apply to special assessment. Exemptions, no matter how meritorious, are of grace and must be strictly construed."

(Crawford *vs.* Burrell, 53 Pa. St. 219.)

> "The distinctions between taxes and assessments have been recognized and stated by the Courts of almost every state in the Union, and a rule of very general acceptance has been based upon these distinctions —that an exemption from taxation is to be taken simply from the burden of ordinary taxes, taxes proper, and in no manner relieved the property owner from the obligation of paying a special assessment."

(Hamilton on Special Assessments, Sec. 312, citing numerous cases.)

"The same rule is applicable in the case of property belonging to any of the above-mentioned institutions (property of educational, religious and charitable institutions) as to cemeteries. Exemptions made by general laws in favor of such property apply only to the general purposes of government, state, county and municipal, even where the statute exempts the specific property 'from taxation of every kind,' or from being 'taxed by any law of the state,' and do not apply to the system of special assessments or local improvements."

(Idem, Section 318.)

The Act making appropriations for the expenses of the District of Columbia for the year ending June 30, 1903, under the head of assessment and Permit Work, provides that "hereafter no property except that of the United States or the District of Columbia shall be exempt from assessments for improvements." (32 Statutes, 596.) While it may be contended that this provision relates only to assessment and permit work, as it appears under that caption, the language is general, and it is submitted, covers all special assessments.

Counsel for the appellant further rely upon the provision of the Act of Congress approved June 28, 1902, providing for the purchase of portion of the land covered by this assessment, and providing further "that the District of Columbia assume all special assessments pending against said land of the heirs of H. M. Schneider."

The "pending assessments" must have referred to the assessments found by the first jury in the Eleventh Street case against the property of the heirs of H. M. Schneider, which in part comprises the property against which the

assessment complained of in the present case was levied. The assessment returned by the first jury has been vacated. The above provision cannot be presumed to have had in contemplation an assessment which had not yet been levied. But, in any event, the language above quoted is in no sense an exemption. It directs that the District of Columbia shall assume all special assessments, etc., which, so far from exempting the property from assessment, assumes that there may be assessments. Judge Barnard, in his opinion rendered in the case below, effectively disposes of the contention of the appellant.

> "It is claimed by counsel for the hospital that the correct name of the hospital is the Garfield Memorial Hospital, and that the jury has only called it the Garfield Hospital. Taken into consideration the location of the hospital and its general name and the description of its land as facing on Eleventh Street, I can see no difficulty by reason of the word "Memorial" being left out of the name in the assessment of the jury as it evidently refers to the Garfield Memorial Hospital.
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> "The depth of the land, 200 feet, takes the portion on which the assessment is levied, back of the ground said to have been obtained by the hospital by the deed of M. H. Schneider, of April 30, 1903, recorded in Liber 2,725, folio 268, at the Northern boundary; but I do not understand that it is claimed that the hospital does not own ground having a frontage of 562.48 feet on Eleventh street, and running back that depth 200 feet, although it holds the title under other deeds. I can see no reason why, if the ground was subject to assessment for benefits, that the assessment by the jury of the amount specified on the land specified, might not be valid.
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> "The hospital urges that it is exempt from taxation for any purpose, and that, if the assessments were made under the terms of its title, it would not be liable for a special assessment for benefits; but that the Com-

missioners of the District would be obliged to assume the same, and protect the hospital from any costs or expense by reason thereof. This may be true, but the Court, sitting as a District Court, does not appear to have jurisdiction to decide the question.

"The statute directs the jury to assess the benefits on the pieces or parcels of land benefited by such extension, and the amount of the assessment for such benefits against the same; and the Court has power to hear and determine objections filed to the verdict and award, and to set aside and to vacate the same, in whole or in part, when satisfied that it is unjust or unreasonable; but there seems to be no jurisdiction given to the District Court thereby to say what lands, if any, are exempt; and no discretion appears to be given to the jury to leave out of their consideration any lands because the title of the same may be in a hospital, or even in the municipal government, or in any church society, or other institution which might be exempt from taxation."

EDWARD H. THOMAS.
JAS. FRANCIS SMITH.